

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6061

PETITION OF DIANE AUGUST AND MICHAEL FAINBERG

(Hearing held April 6, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, May 5, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(2). The existing single-family dwelling requires a variance of 10.25 feet as it is within 9.75 feet of the rear lot line and the petitioners propose the construction of a two-story addition that requires a variance of seven (7) feet as it is within thirteen (13) feet of the rear lot line. The required setback is twenty (20) feet.

The subject property is Lot 2, Block 3, Westmoreland Hills Subdivision, located at 4500 Wetherill Road, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00549937).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a two-story addition in the eastern section of the property.
2. The petitioner testified that his house was built in 1936 and that his property is a small, shallow, irregularly-shaped lot. The petitioner testified that his lot is the smallest in the immediate neighborhood. The petitioner testified that his lot is 5,787 square feet and that it is 60 feet in depth. The petitioner testified that the total square footage of the addition will be 222 square feet and that the variance is required for 40 square feet. See, Exhibit No. 11 [enlarged site plan].
3. After a review of Section 59-B-5.3 [One-family dwelling] of the Montgomery County Zoning Ordinance, the Board found that this section applies to the variance requested for the existing single-family dwelling. Therefore, the existing single-family dwelling would not

require a variance. Section 59-B-5.3 states “Any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is not a non-conforming building.”

FINDINGS OF THE BOARD

Based on the petitioners’ binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioners’ property is a small, shallow, irregularly-shaped lot. The property is 5,787 square feet, which is substandard for the R-60 Zone. The property is one of the two smallest lots in the petitioners’ neighborhood. See, Exhibit No. 8 [zoning vicinity map].

The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a two-story addition is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the new construction will not materially change the view from the surrounding properties and that the variance will not be detrimental to the use and enjoyment of adjoining and neighboring properties.

Accordingly, the requested variance of seven (7) feet from the required twenty (20) foot rear lot line setback for the construction of two-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 5(a) through 5(e).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Wendell M. Holloway, with Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 5th day of May, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.